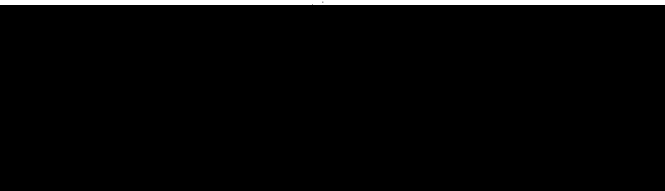




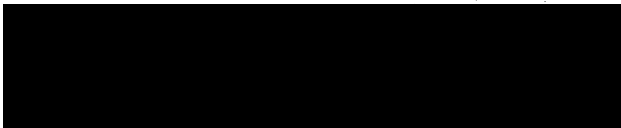
U.S. Citizenship
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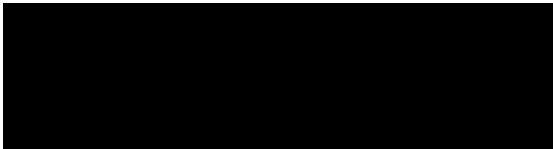
FILE: WAC 03 129 54253 Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for further investigation and additional evidence.

The petitioner is a Mexican seafood restaurant. It seeks to employ the beneficiary permanently in the United States as a specialized cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had failed to establish that the beneficiary had the requisite two years experience required by the offered position.

On appeal, counsel submits additional evidence and asserts that it establishes the beneficiary's eligibility for the position offered.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 20, 2001. The visa petition, filed March 17, 2003, indicates that the petitioner was established in 1998 and seven employees. Part B of the ETA-750, signed by the beneficiary, reflects that the petitioner has employed the beneficiary since January 1999.

As noted on Part A, item 14 of the approved labor certification (ETA-750), the beneficiary must have two years of experience in the job offered of specialized cook. Item 15 of the labor certification lists other special requirements that an applicant for the job of specialized cook possess. It includes the requirement that the "minimum 2 years experience must be in field of cooking Michoacan seafood dishes." The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum

requirements for this classification are at least two years of training or experience.

Because the record did not initially contain sufficient documentation in support of the petitioner's continuing ability to pay the proffered wage, as well as evidence to establish that the beneficiary possesses the employment experience specified on the labor certification, the director requested additional evidence pertinent to those issues. On July 13, 2003, the director instructed the petitioner to submit evidence to establish that the beneficiary acquired the requisite work experience specified in the ETA-750A. The director advised the petitioner that the evidence must be submitted on the letterhead of the previous and/or current employer showing the title, address and telephone number of the person providing the information. Verification should state the beneficiary's title, duties, dates of employment, and number of hours worked per week.

In response, the petitioner, through counsel, submitted copies of two letters from individuals associated with [REDACTED] a restaurant located in Puebla, Mexico, featuring "tacos and tortas planchadas, seafood and pozole [REDACTED] style," as set forth on the letterhead. The letters are both dated March 30, 2001, and are signed [REDACTED] Owner, and [REDACTED] Director General, respectively. The content of both letters appears to be identical, however, the only letter submitted with an English translation¹ is from [REDACTED] who bears the same last name of the beneficiary. She states that [the beneficiary] is:

[A]n individual that I have known since June 3, 1987 and who worked with us until July 20, 1990, time in which he demonstrated of being an honest person, of good principles and costumes, employee capable of developing efficiently any activity given, motives by which I distinguishable recommend him with assurance that he will develop any job as convenient.

In denying the petition, the director found that the employment certification, submitted by the petitioner from [REDACTED] failed to establish the beneficiary's work experience as a specialized cook. The director noted that [REDACTED] letter failed to specify the beneficiary's title, duties and hours worked per week.

On appeal, counsel submits an updated letter from [REDACTED] and asserts that the beneficiary has many years of experience as a specialized cook. The new letter from [REDACTED] is dated September 26, 2003, and is accompanied by a certified English translation. It states:

Pursuant to our previous letter of recommendation for [REDACTED], please be advised that [REDACTED] worked from June 1987 to June 1990 on a full time basis of 45 hours per week for this restaurant as a cook and his duties were preparing and cooking a variety of Michoacan and Vallarta seafood dishes.

Therefore we also mention that said person also performed as one of our best employees.

Although the new letter from [REDACTED] submitted on appeal, appears satisfy the director's concern that the beneficiary possesses the requisite experience as a specialized cook, it is noted that Mr. Garcia's signature is substantially different from the signature appearing on the earlier letter dated March 30, 2001, that was submitted

¹ The English translation did not identify the translator and was not a certified translation in accordance with 8 C.F.R. § 103.2(b)(3).

in response to the director's request for additional evidence. As that raises a significant concern of authenticity, the case will be remanded to the director for further investigation. The director may request any additional evidence deemed relevant. Similarly, the petitioner may also provide any further pertinent evidence within a reasonable time to be determined by the director. Upon receipt of all evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.